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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(El Dorado)

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Conservatorship of RICHARD K.

JANET WALKER CONROY, as Public  
Guardian, etc.,

Petitioner and Respondent,

v.

RICHARD K.,

Objector and Appellant.

C069044

(Super. Ct. No.  
PMH20060026)

Richard K. appeals the judgment reestablishing a Lanterman-Petris-Short Act (LPS; Welf. & Inst. Code,<sup>1</sup> § 5000 et seq.) conservatorship of his person and estate. He contends there is not sufficient evidence to support the jury's finding that he was presently gravely disabled. We disagree. Richard also contends there is not sufficient evidence to support the

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<sup>1</sup> Further undesignated statutory references are to the Welfare and Institutions Code.

imposition of special disabilities denying him the rights and privileges to possess or carry firearms, possess a driver's license, enter into contracts, and vote. We find substantial evidence supporting the imposition of all the special disabilities, except the denial of Richard's right to vote. Accordingly, we shall remand to the trial court to restore Richard's right to vote. In all other respects, we affirm.

#### PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Richard is an 80 year-old man, who has suffered a long history of mental health problems. He has been diagnosed as bipolar and been psychiatrically hospitalized 26 times.

In August 2009, Richard was living under a conservatorship in a board and care facility. He had been decompensating and his behavior was increasingly unsafe. He needed one-on-one monitoring by the staff. At one point, he wandered away from the facility and had to be returned by the police. He refused to eat his meals and refused his medications. He had to be moved from the board and care facility to a locked facility because the board and care could not maintain him. His insight was impaired and his judgment limited.

Tom Donohoe, El Dorado County mental health supervisor and case manager testified as an expert in conservatorship investigations and the conservatorship process. Donohoe has been working with Richard since 2006. He also reviewed Richard's mental health records back to 1982.

Richard's records and Donohoe's personal experience with Richard, reveal Richard has never willingly and without

prompting taken his psychiatric medication. Sometimes Richard agrees he is bipolar, but he does not understand what that means and how it affects him when he does not take his medication. This lack of insight into his condition and need for medication inhibits his ability to live independently. No family or friends have offered to assist Richard. Richard did not have a place to live.

Richard has not been able to live independently since 2006. He has gone back and forth between locked facilities and board and care facilities. The last time he was living independently, police officers were called to his apartment due to a commotion he caused. His room was in disarray and filled with alcohol bottles, he was very irate and manic. Richard is unable to live independently because he refuses his medications, claiming he does not need them, decompensates and is unable to maintain his behaviors. As he decompensates, his behavior becomes more manic, argumentative, obtrusive, and delusional. His most recent behavioral decomposition included walking the hallways of the facility nude, refusing food and medication.

Richard also suffers from delusions. He believes his current net worth is \$100 million. Based on Richard's psychiatric history, his numerous psychiatric hospitalizations, his continued refusal to take his medication, his refusal to eat and his repeated evictions caused by his extreme manic behavior Donohoe concluded Richard was unable to provide for his food, clothing, or shelter.

Mari Robertson, a deputy public guardian, testified as an expert regarding the process of conservatorship, a conservator's duties and the proposed conservatee's ability to provide for food, clothing, and shelter and handle his finances. Mari first met Richard in 2006 after he was placed in a temporary LPS conservatorship and she was assigned his case. She also reviewed his medical and mental health records and discussed his history with another public guardian who had worked with Richard.

Richard was diagnosed bipolar and was not medication compliant. In 2006, when she first worked with him, he already had a long history of not being medication compliant. Over the years, Richard's status has remained the same. He has fixed delusions which have been unchanged and he lacks insight into his mental illness. Each time he is placed in a lower level of care, he decompensates. Richard believes he can communicate with the press and God through numbers, that he worked for the CIA and is still affiliated with the CIA. He told Robertson that if he were not conserved, he would live at the Stanford Ranch and the Hewlett's, of Hewlett-Packard, would take care of him. He believes the person who discovered bipolar disorder was a relative of his. His current income is from the Social Security Administration. In reviewing his financial records and accounts, he had a bank account with \$10, miscellaneous personal possessions, but no stocks or bonds or anything suggesting he had a pension or benefits.

During her most recent discussions with Richard regarding medications, he would not answer Robertson directly and told her to shut up. Based on Richard's delusions, the fact that he needs prompting to do basic things like showering and taking his medication, and his occasional refusal to do those things, Robertson concluded he could not provide himself with food, clothing, or shelter. It was her opinion that if he were not conserved, he would be homeless and off medication, then shortly thereafter would be picked up by the police. This is the pattern which has repeated itself over the years.

The parties stipulated to the admission into evidence of the declarations of Drs. Thomas Andrews and Gregory White. Both doctors diagnosed Richard with bipolar disorder. Dr. Andrews observed that Richard's thought process was "tangential and difficult to follow at times, history of manic behavior with pressured speech, delusional (believes things on TV and in the paper are about him), and trouble with sleeping." Dr. White observed a history of "manic behavior (hyperverbal, insomnia, pressured speech, tangential thought process)." Both doctors opined he was "incapable of accepting treatment voluntarily." They also concluded he should be denied the right to enter into contracts and the right to vote due to poor or no insight and impaired judgment. Dr. White also concluded he should be denied the right to enter contracts due to his poor impulse control. They concluded he should be denied the right to refuse or consent to treatment related to his grave disability, denied the right to refuse or consent to other medical treatment unrelated

to his grave disability and denied the right to refuse or consent to routine medical treatment due to his lack of insight, impaired judgment, inability for self-care, and inability to adequately assess his health care needs. Dr. Andrews also concluded he should be denied these rights because of his poor impulse control.

Richard testified on his own behalf. He identified his current residence as Crestwood in Redding.<sup>2</sup> He testified if he were released from conservatorship, he would live in Redding for a month and then move to Stanford Camp at Fallen Leaf Lake on a long-term basis. He described Stanford Camp as living facilities with cabins and dining halls. He believed he was eligible to stay there because he was affiliated with Stanford, including having received a degree from Stanford in 1969, and did not believe he would be charged to live there. He would eat at the dining halls at Stanford Camp, or go to the grocery store to buy groceries. He claimed he would continue to take his medications. Also, if he were not conserved, his Social Security check would go directly into his bank account and he would again become the payee. He had looked into the cost of renting an apartment, and expected that would be approximately \$300 per month. He stated he had worked for the CIA, and worked for Lockheed, a "subservient of CIA."

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<sup>2</sup> At the time of trial, Richard was residing at the Crestwood Wellness and Recovery Center.

Following Richard's testimony, Robertson investigated the Stanford Ranch at Fallen Leaf Lake.<sup>3</sup> She learned it was a conference center, available three and one-half months of the year for a rate of \$160 per person per day.

Richard was recalled and testified Stanford Camp was a different place than Stanford Ranch. He also described where he had previously stayed at the facility.

The jury was given a special instruction regarding the right to vote. The jury was instructed: "If you find that Richard [K.], as a result of a mental disorder, is gravely disabled then you must also decide whether he is capable of completing an affidavit of voter registration. [¶] To reach a verdict that Richard [K.] is not capable of completing an affidavit of voter registration all twelve jurors must agree to that decision. [¶] To complete an affidavit of voter registration Richard [K.] must be able to state the facts necessary to establish that Richard [K.] as a voter -- to establish Richard [K.] as a voter, his full name, his residential address and telephone number, his mailing address if different from the residential address, his date of birth, the state or country of birth, his occupation, his political party affiliation, that he is not presently in prison or on parole for the conviction of a felony, and whether he has been registered at another address under another name or is intending to

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<sup>3</sup> Richard called it Stanford Camp.

affiliate with another party, and if so, the prior address, name or party."

The jury found beyond a reasonable doubt Richard was gravely disabled as a result of a mental disorder. Having made that determination, the jury also made a special finding that Richard was not capable of completing an affidavit of voter registration. The court issued an order reappointing a conservator of the person and estate. The court also imposed special disabilities, precluding Richard from carrying or possessing a firearm or dangerous weapon, possessing a driver's license, entering contracts, voting, refusing or consenting to treatment related to his grave disability, refusing or consenting to treatment unrelated to his disability and refusing or consenting to routine medical treatment unrelated to his grave disability.

## DISCUSSION

### I

#### *Finding Of Gravely Disabled*

Richard contends there was insufficient evidence to support the finding he was presently gravely disabled. We disagree.

To establish a conservatorship under the LPS Act, the public guardian must prove the proposed conservatee is gravely disabled beyond a reasonable doubt. (§ 5350; *Conservatorship of Smith* (1986) 187 Cal.App.3d 903, 909.) As relevant in this case, to establish "grave disability," the evidence must support an objective finding that due to mental disorder, the person, "is unable to provide for his or her basic personal needs for



food, clothing, or shelter.” (*Conservatorship of Carol K.* (2010) 188 Cal.App.4th 123, 134; § 5008, subd. (h)(1)(A).)

“In reviewing a conservatorship, we apply the substantial evidence standard to determine whether the record supports a finding of grave disability. The testimony of one witness may be sufficient to support such a finding. [Citation.] We review the record as a whole in the light most favorable to the trial court judgment to determine whether it discloses substantial evidence. Substantial evidence, which is evidence that is reasonable, credible, and of solid value, also includes circumstantial evidence. [Citation.]” (*Conservatorship of Carol K., supra*, 188 Cal.App.4th at p. 134.) “Substantial evidence includes circumstantial evidence and the reasonable inferences flowing therefrom.” (*Conservatorship of Walker* (1989) 206 Cal.App.3d 1572, 1577.) A lack of insight into one’s mental illness and the concomitant reluctance to accept treatment provides evidence in support of a finding of grave disability. (*Walker*, at p. 1577; *Conservatorship of Guerrero* (1999) 69 Cal.App.4th 442, 446-447.)

Richard does not challenge the sufficiency of the evidence that he has a mental disorder, he challenges only the finding that his mental disorder renders him unable to meet his needs for food, clothing, or shelter. He claims there was not evidence he would not take his medication and that he would be unable to survive if he did stop.

Richard has a long-term history of psychiatric hospitalization and conservation. Over the course of 27

commitments, he has been unable to maintain his behavior or remain medication compliant. He has never willingly taken his medication. He lacks insight into his mental illness and how medication assists him. Every time he is placed in a lower level of care, he stops taking his medication and decompensates. Both doctors declared he was unable to adequately assess his health care needs and incapable of accepting voluntary treatment. Richard does not believe he needs to take medication and will only take it with prompting. He has a long and uninterrupted history of denying treatment, refusing medication, and decompensating. As a result of his lack of medication compliance and decompensation, he has been repeatedly evicted from a variety of living situations, including apartment complexes, independent living, and board and care facilities. This is substantial evidence supporting the finding that he is gravely disabled.

## II

### *Special Disabilities*

Richard also contends there was insufficient evidence to support the imposition of the special disabilities of the right to possess or carry firearms, to possess a driver's license, to enter into contracts, and his right to vote. He contends the doctors' declarations supporting the imposition of these disabilities, which are check the box forms, does not meet the evidentiary burden. We find these forms constitute substantial evidence to support the imposition of the special disabilities to possess or carry firearms, to possess a driver's license, and

to enter into contracts. This evidence does not, however, support the denial of Richard's right to vote.

A finding of grave disability alone is not sufficient to justify the imposition of the various special disabilities enumerated in section 5357. (§ 5005; *Riese v. St. Mary's Hospital & Medical Center* (1987) 209 Cal.App.3d 1303, 1313.) The conservatee retains the rights and privileges covered by the special disabilities unless the court, after making separate findings of incapacity to support the imposition of the special disabilities, imposes those disabilities and confers corresponding authority on the conservator. (*Conservatorship of George H.* (2008) 169 Cal.App.4th 157, 165; *Riese*, at p. 1313.) Because the special disabilities deprive the conservatee of substantial constitutional rights, due process must be afforded before these rights are compromised. (§§ 5357, 5358; *Conservatorship of Christopher A.* (2006) 139 Cal.App.4th 604, 612.) "The party seeking conservatorship has the burden of producing evidence to support the disabilities sought, the placement, and the powers of the conservator, and the conservatee may produce evidence in rebuttal." (*George H.*, at p. 165.) There must be evidence in the record to support each of the specific disabilities imposed.

#### A

##### *Right To Possess Driver's License And Firearm*

To support a limitation on a conservatee's ability to possess a firearm or deadly weapon, the court must find "that possession of a firearm or any other deadly weapon by the person

would present a danger to the safety of the person or to others." (§ 8103, subd. (e)(1).) Generally, the overriding concern in the issuance of a driver's license is whether the person is able to operate a motor vehicle safely. (Veh. Code, §§ 12800, subd. (g), 12805, subd. (c), 12806, subd. (c); *People v. Superior Court (Wilson)* (1993) 18 Cal.App.4th 31, 36-37.) Mental disorders may affect a person's "ability to exercise reasonable and ordinary control in operating a motor vehicle" and may be the basis for refusing that person a driver's license. (Veh. Code, § 12800, subd. (g), see Veh. Code, § 12806, subd. (c).) The doctor's declarations do not provide direct evidence on the issue of Richard's ability to possess a driver's license or a firearm. The conclusions on these points were apparently redacted from the declarations so as not to go before the jury. However, there was evidence before the court that Richard lacked judgment, had poor impulse control, and suffered from delusions. This was substantial evidence from which the court could conclude Richard could not safely possess a firearm or a driver's license.

B

*Right To Contract*

Under Civil Code section 1556, persons of "unsound mind" are not capable of entering into contracts. There are essentially three classifications of incapacity based on an "unsound mind": (1) entirely without understanding (Civ. Code, § 38); (2) unsound but not entirely without understanding; and (3) susceptible to undue influence (Civ. Code, §§ 39, 1575;

*Smalley v. Baker* (1968) 262 Cal.App.2d 824, 834-835, disapproved on another point in *Weiner v. Fleischman* (1991) 54 Cal.3d 476, 485-486). Here, the doctors' declarations indicate that Richard had impaired judgment and insight. His delusions that he had a net worth of \$100 million and that the Hewlett family would care for him if he were not conserved is further evidence that he is without understanding about his financial situation. This is substantial evidence supporting the denial of his right to contract.

C

*Right To Vote*

As relevant here, the Elections Code provides that a person shall be disqualified from voting if a conservator of the person and estate is appointed *and* the person is "not capable of completing an affidavit of voter registration in accordance with [Elections Code] Section 2150." (Elec. Code, § 2208, subd. (a)(2).) Essentially, Elections Code section 2150 requires that the affidavit show the affiant's name, place of residence, mailing address, date of birth and driver's license or Social Security number, state or country of birth, occupation, political affiliation, prior voter registration, and whether currently imprisoned or on parole for a felony conviction. There is insufficient evidence supporting the finding that Richard is not capable of completing an affidavit of voter registration.

The doctors' declarations state Richard should be denied the right to vote due to his poor insight and impaired judgment.

There is evidence supporting the conclusion that Richard has poor insight and impaired judgment. However, under the statutory scheme, a lack of judgment and insight is not grounds for a disqualification from voting.

Nor did Robertson or Donohoe provide any opinion or evidence on Richard's ability to complete a voter registration affidavit. Neither testified on the salient points delineated in the statute which constitute an ability to complete the voter registration affidavit.

Richard's testimony also did not fill the evidentiary void. In his testimony, Richard correctly answered where he currently resided and his date of birth.<sup>4</sup> He was not asked any other questions relevant to his ability to complete a voter registration affidavit. There simply is insufficient evidence in this record that Richard is unable to complete an affidavit of voter registration. Accordingly, we cannot uphold the imposition of that special disability.

#### DISPOSITION

The matter is remanded to the trial court and the trial court is ordered to restore Richard's right to vote and notify

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<sup>4</sup> The medical records indicate Richard's birthday is March 17, 1931. Trial was held in late June 2011. Richard testified he was 80 years old, plus a couple of months and that in 20 years, he would be 100 on St. Patrick's Day.

the county elections official that his right to vote has been restored. In all other respects, the order appointing a conservator and imposing special disabilities is affirmed.

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ROBIE, J.

We concur:

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BLEASE, Acting P. J.

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MAURO, J.